

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

---

LISA M. DEUTSCH,

Plaintiff,

DECISION AND ORDER

10-CV-6671L

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

---

Plaintiff Lisa M. Deutsch (“plaintiff”) commenced this action pursuant to 42 U.S.C. §405(g) to review the final decision of the Commissioner of Social Security (“the Commissioner”), which denied Deutsch’s claim for supplemental security income benefits. The Commissioner now moves to reverse the determination denying benefits and remand the matter for further administrative proceedings pursuant to the fourth sentence of §205(g) of the Social Security Act, 42 U.S.C. §405(g).

The Commissioner concedes that the ALJ failed to address evidence in the record which contradicted the ALJ’s findings, including the opinion of State agency psychologist Dr. Tovah Wax, and that the ALJ’s assessment of plaintiff’s residual functional capacity was inconsistent with the opinion of the psychiatric consultant upon which the ALJ claimed to rely. The Commissioner also contends that the ALJ prematurely considered the materiality of plaintiff’s history of substance abuse, and that if materiality ultimately requires consideration, the record is insufficiently developed for this purpose. Therefore, the Commissioner now believes that there are gaps in the administrative record which require further development, and that the ALJ applied incorrect legal standards in assessing plaintiff’s claim.

I concur with the Commissioner's view that remand for calculation and payment of benefits is not appropriate at this time, and that further proceedings are necessary in order to consider the record in its entirety, and if necessary, to obtain expert testimony concerning the materiality of plaintiff's substance abuse. Therefore, the motion of the Commissioner (Dkt. #10) to remand to the Commissioner for rehearing is granted.

### CONCLUSION

The motion of the Commissioner (Dkt. #10) to remand this matter for further administrative proceedings pursuant to the fourth sentence of §205(g) of the Social Security Act, 42 U.S.C. §405(g) is granted. The final decision of the Commissioner is reversed, and the case is remanded to the Commissioner for further proceedings. The Clerk is directed to close the case.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "David G. Larimer", is written over a horizontal line.

DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
August 18, 2011.